M/S Phonographic Performance Ltd vs.ministry of Human Resources Development & Ors

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Court : Delhi

Decided On : Sep-04-2017

Appellant : M/S Phonographic Performance Ltd

Respondent : Ministry of Human Resources Development & Ors

Judgement :

$~66 * IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 5829/2013 & CM128352013, 30174/2015 M/S PHONOGRAPHIC PERFORMANCE LTD .....Petitioner Through Mr Pragyan Pradip Sharma, Mr Rohit Gandhi, Mr Shikhar Garg, Mr Ganesh Babu, Mr A.K. Rathore, Advocates. versus MINISTRY OF HUMAN RESOURCES DEVELOPMENT & ORS .....

... RESPONDENTS
Through Mr Sanjeev Narula, CGSC with Mr Anumita Chandra, Mr Abhishek Ghai, Advocates for UOI. Mr Munish Mehra, Advocate for R3 and R4. CORAM: HON'BLE MR. JUSTICE VIBHU BAKHRU %

ORDER
0409.2017 VIBHU BAKHRU, J1 The petitioner (hereafter as PPL) is a company incorporated under the provisions of the Companies Act, 1956 and is a copyright society registered under Section 33 of the Copyright Act, 1957 (hereafter the Act). PPL has filed the present petition, inter alia, impugning two separate notices

(Office Memoranda) - both dated 31.05.2013 - whereby the petitioner was called upon to file a written statement in respect of the complaints filed by respondent nos. 3 and 4 respectively.

2. The principal controversy involved in the present petition is whether W.P.(C) 5829/2013 Page 1 of 10 the aforementioned notices (hereafter referred to as the impugned orders)are maintainable in view of Rule 50 of the Copyright Rules, 2013 (hereafter the Rules),which provides for institution of an inquiry, either on complaint of the Registrar of Copyrights or a member of the copyright society. The petitioner asserts that since respondent nos. 3 and 4 are not members of the petitioner society, the Central Government could not act on the complaints made by respondent nos. 3 and 4. The petitioner also contends that the impugned orders does not reflect that the Central Government had formed any belief as required under Rule 50 of the Rules.

3. The petitioner states that another company by the name of Indian Performing Right Society Limited (hereafter as IPRS) is also registered as a copyright society for administration of musical and literary works. It is stated that certain disputes arose in regard to the management and administration of IPRS and in this context respondent no.3 and 4 lodged separate complaints for violation of Corporate Governance norms by IPRS. Respondent nos. 3 and 4, inter alia, alleged that funds of IPRS were invested in Equity related instrument and in violation of Section 292 of the Companies Act, 1956. It was also alleged that Section 217 (2A) and 217 (3) of the Companies Act, 1956 were violated by IPRS.

4. On receipt of the aforesaid complaints, respondent no.1 (Central Government through its delegate, Special Officer Copyright) issued the impugned orders forwarding the complaints of respondent nos. 3 and 4 respectively and calling upon the petitioner to file a written statements in respect of the said complaints in terms of Rule 50 of the Rules. W.P.(C) 5829/2013 Page 2 of 10 5. Aggrieved by the same, the petitioner has filed the present petition. The present petition was moved on 13.09.2013 and this Court passed an ad interim order to the effect that the petitioner need not participate in the proceedings, commenced pursuant to the impugned orders. The said interim order has been continued from time to time and

is still subsisting. It is stated that during the pendency of the present petition, all disputes with respondent nos. 3 and 4 have been settled and consequently, they have sought withdrawal of their complaints.

6. Mr Sharma, learned counsel appearing for the petitioner contended that in view of the overarching settlement arrived at with respondent nos. 3 and 4 and in view of their withdrawal of the complaints, the proceedings initiated by respondent nos.1 and 2 do not survive. Mr Sanjeev Narula, learned counsel who appears for respondents nos. 1 and 2, contests the same. He contended that notwithstanding that the complaints made have been withdrawn, respondents nos. 2 would, nonetheless, be entitled to continue with its inquiry and take the necessary action as warranted.

7. Mr Narula referred to Section 34 of the Act in the context of the controversy, whether the impugned orders could be passed against PPL on complaints made by persons who are not its members. Mr Narula submitted that the provisions of Section 34 and 33 of the Act were very wide and the Central Government could, if it was satisfied that PPL was managed in a manner detrimental to the interests of the concerned authors and other owners of rights, cancel the registration of PPL. He submitted that the width of Section 34 could not be restricted by Rule 50 of the Rules. He also referred to the decision of the Bombay High Court in The Indian W.P.(C) 5829/2013 Page 3 of 10 Performing Rights Society Ltd. v. Union of India and Ors W.P.(C) NO23842017and drew the attention of this Court to paragraph 21 of the said judgement in support of his contention that prima facie satisfaction, whether to order an enquiry under Section 33(4) of the Act, enquiry could only be taken after the PPL had filed its written statement.

8. Before proceeding further, it would be relevant to refer to sub- sections (4) and (5) of section 33 of the Act, which are set out below:-

"33 (4) The Central Government may, if it is satisfied that a copyright society is being managed in a manner detrimental to the interests of the owners of rights concerned, cancel the registration of such society after such inquiry as may be prescribed. 33(5) If the Central Government is of the opinion that in the interest of the owners of rights concerned, it is necessary so to do it may, by order, suspend the registration of such society pending inquiry for such period not exceeding one year as may be specified in such order under sub-section (4) and that Government shall appoint an administrator to discharge the functions of the copyright society. 9. It is apparent from the plain reading of sub-sections (4) and (5) of Section 33 of the Act that the Central Government is empowered to take punitive measures in the event it finds that a copyright society is being managed in a manner detrimental to authors and other owners of rights. The Central Government is also empowered to suspend the registration of a copyright society in certain eventualities.

9. Section 78 (2) (b) of the Act empowers the Central Government to make rules to provide for the form of complaints and applications to be W.P.(C) 5829/2013 Page 4 of 10 made, and the licences to be granted, under this Act.

10. In exercise of the said powers, the Central Government has framed the Rules (The Copyright Rules, 2013). Thus, whilst the Central Government has the jurisdiction under section 33 of the Act to suspend and/or cancel the registration of a copyright society, such power has to be exercised in conformity with the Rules.

11. Rule 50 of the Rules is relevant and is set out below:-

"50(1) If the Central Government, on a complaint of the Registrar of Copyrights or a member of the copyright society, has reason to believe that the copyright society is being managed in a manner detrimental to the interests of its members concerned or for non-compliance of requirements under section33A, sub- section (3) of section 35 and section 36 of the Actor any change carried out in the instrument by which the copyright society is established or incorporated and registered by the Central Government, without prior notice to it shall, provide a copy of the complaint to the society and require the society to submit a written statement within fifteen working days. 12. It is apparent from the plain reading of Rule 50(1) of the Rules that the Central Government is required to call for a written statement in respect of a complaint; however, such action can only be initiated where the complaint is made by the Registrar of Copyrights or a member of the Copyright Society. Concededly, in the present case neither respondent no.3 nor 4 (complainants) are - or were at the material time - members of PPL. Therefore, the threshold condition for the Central Government to initiate proceedings, is absent. It is not the legislative intention that the Central Government moves on complaints received from any person. Notice of the complaint can only be taken if it is made by member of a society or by the W.P.(C) 5829/2013 Page 5 of 10 Registrar of Copyrights. This clearly implies that in the event a complaint is initiated by a person other than a member, it is required to be examined by the Registrar and if he is satisfied that the allegations are substantiated he can make a complaint to the Central Government for initiating proceeding under Rule 50 of the Rules. This, of course, does not apply where the complaint is made by a member of the society; in that case, the Central Government can initiate the proceedings without any input or reference from Registrar of Copyrights.

13. The next important condition that is necessary for inviting a registered society to submit a written statement is the formation of belief that the complaint is merited. Unless, the Central Government has reasons to believe that the copyright society is being mismanaged or conducted in a manner detrimental to the interests of its members or owners of rights or that certain statutory provisions have been violated, the Central Government cannot act on the complaints received.

14. The expression reason to believe has been examined in various decisions in the context of various statutes. In Calcutta Discount Company v. Income Tax Officer:

1961. SCR (2) 241, the Supreme Court held as under:-

"The expression reason to believe postulates belief and the existence of reasons for that belief. The belief must be held in good faith: it cannot be merely a pretence. The expression does not mean a purely subjective satisfaction of the Income Tax Officer: the forum of decision as to the existence of reasons and the belief is not in the mind of the Income Tax Officer. If it be asserted that the Income Tax Officer had reason to believe that income had been under assessed by reason of failure to disclose W.P.(C) 5829/2013 Page 6 of 10 fully and truly the facts material for assessment, the existence of the belief and the reasons for the belief, but not the sufficiency of the reasons, will be justiciable. The expression therefore predicates that the Income Tax Officer holds the belief induced by the existence of reasons for holding such belief. It contemplates existence of reasons on which the belief is founded, and not merely a belief in the existence of reasons inducing the belief; in other words, the Income Tax Officer must on information at his disposal believe that income has been under assessed by reason of failure fully and truly to disclose all material facts necessary for assessment. Such a belief, be it said, may not be based on mere suspicion: it must be founded upon information 15. Given the scheme of Rule 50 of the Rules, it is not necessary for the Central Government to pass a detailed order recording its reasons to believe. It is to be sufficient if the complaint is examined by the concerned officer and on examination of such complaint, he finds reason to believe that the copyright society is being managed in a manner detrimental to the interests of the members/owners of rights or is non-compliant with the requirements of Section 33(a), 35(3) and 36 of the Act or that there is a change in instrument by which copyright society is established or incorporated without prior notice.

16. The contention that the concerned officer is not required to record a prima facie opinion while calling for a written statement to be filed is merited. However, a copyright society cannot be called upon to respond to a complaint mechanically and without the concerned officer examining the complaint. The complaint must bear out that the copyright society is being managed in a manner detrimental to the interests of its members/owners of rights and/or there is failure to comply with the specified provisions of the W.P.(C) 5829/2013 Page 7 of 10 Act or there is a change in the instrument by which the copyright society is established or incorporated without prior approval. The concerned officer is required to form belief on the said basis. Such belief must be clearly discernable from the order calling for a written statement by the concerned society or be otherwise available on the records of the Central Government. However, it is necessary that the records bear out that the Central Government has the reasons to believethat the copyright society is being managed in a manner detrimental to the interests of its members concerned or for non-compliance of requirements under the specified provisions of the Act or any change carried out in the instrument by which the copyright society is established/incorporated and registered, without prior notice to the Central Government.

17. Mr Narulas contention that the Central Government can call for a response from the copyright society in respect of any complaint and its powers are not fettered by Rule 50 of the Rules, is unpersuasive. Rule 50 of the Rules prescribes the manner in which the Central Government is to exercise its powers. It is settled law that if a statute provides a manner in which the jurisdiction is to be exercised, the same is required to be done in that manner or not at all. In the case of Babu Verghese and others v. Bar Council of Kerala and Others : (1999) 3 SCC422 the Supreme Court had referring to earlier decisions reiterated the principle in the following words:-

"31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any Statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor (1875) 1 Ch. D. 426 which was followed by Lord W.P.(C) 5829/2013 Page 8 of 10 Roche in Nazir Ahmad v. King Emperor AIR 1927 ALL579who stated as under: Where a power if give to do a certain thing in a certain way, the thing must be done in that way or not at all. 18. In the present case, the impugned order dated 31.05.2013, in respect of the complaint received from Mr Milind Srivastava (respondent No.3) does not indicate in what manner affairs of PPL have been and are being managed to the determent of its members. The complaint is mainly with regard to the affairs of IPRS. There is nothing stated in the said impugned order (relating to the complaint of Mr Srivastava) which would indicate that the Central Government had any reason to believe that the affairs of PPL were being conducted in a manner detrimental to its members. Thus, the said impugned order cannot be sustained on this ground as well.

19. The impugned order dated 31.05.2013, issued in respect of the complaint filed by Mr Lalit Pandit (respondent no.4) however, does indicate that the Central Government had taken note of the complaint that PPL have been violating the provisions of the Act. This is evident from second paragraph of the said impugned order, which reads as under:-

"It is also alleged that IPRS still does not collect royalties for the utilization via broadcast of Indian musical and literary works. These royalties are being collected by Select Media Private Limited under its direct arrangement with PPL and paid by way of Minimum Guarantees or Lump Sum amounts to PPL with no royalties reportedly being paid to IPRS. Further, it is alleged that IPRS still does not collect or distribute royalties from the utilization of Indian music in the Mobile or Digital sectors. These royalties are being collected through PPL (for internet by entities such as DCI Media) and paid directly and only to Music Company W.P.(C) 5829/2013 Page 9 of 10 members of PPL 20. In view of the above, the said impugned order (pursuant to complaint filed by respondent no.4) cannot be faulted on the ground that the Central Government, has no reason to believe -as required in terms of Rule 50 - that PPL is being managed in a manner detrimental to the interests of its members/owners of rights or for non-compliance of requirements under the specified provisions of the Act.

21. In view of the above, the impugned orders are set aside for the reason that the same have been issued on a complaint, which was neither made by the members of the PPL nor by the Registrar of Copyrights. The impugned order dated 31.05.2013, in respect of the complaint made by respondent no.3 is also not sustainable, as it does not indicate that the Central Government had any reason to believe that the PPL had fallen foul of the Provisions of sub-sections (4) and/or (5) of section 33 of the Act.

22. It is clarified that nothing stated herein shall preclude the respondents from initiating enquiry in accordance with law.

23. The petition and pending applications are disposed of. VIBHU BAKHRU, J SEPTEMBER04 2017 pkv W.P.(C) 5829/2013 Page 10 of 10